



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Tyson Farms, Inc.
FOR
Tyson Farms, Inc. Temperanceville Facility
VPDES Permit No. VA0004049**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Tyson Farms, Inc., regarding the Tyson Farms, Inc. Temperanceville Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CAP" means corrective action plan.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means the manufacturing operation, consisting of the poultry hatchery and live chicken processing, rendering operation, and wastewater treatment facility located at 11224 Lankford Highway, in Temperanceville, Virginia, which treats and discharges stormwater and wastewater to State waters.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0004049, which was issued under the State Water Control Law and the Regulation to Tyson on December 6, 2010, which was reissued on January 1, 2016 and expires on December 31, 2020.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
21. "Tyson" means Tyson Farms, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Tyson is a "person" within the meaning of Va. Code § 62.1-44.3.
22. "VAC" means the Virginia Administrative Code.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VPA Permit" means the Virginia Pollutant Abatement Permit that DEQ issued to Tyson on April 19, 2011 and expires April 18, 2021 under VPA01035.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.
26. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Tyson owns and operates the Facility. The Facility consists of a poultry hatchery, which supplies chicks to contract growers, the processing of live chickens, and the treating and

discharging of treated wastewater and storm water resulting from manufacturing and processing operations. Poultry processing includes slaughtering, defeathering, eviscerating, chilling, packaging, and shipping of poultry products for human consumption to an offsite destination. Tyson also renders offal and feathers by-products into useable animal feed ingredients.

2. The Permit allows Tyson to discharge treated stormwater and wastewater resulting from poultry processing and rendering operations to an unnamed tributary, in strict compliance with the terms and conditions of the Permit.
3. The Permit requires Tyson to monitor and report compliance with effluent limits for ammonia, Total Suspended Solids (TSS), *E. coli*, fecal coliform, and Biological Oxygen Demand (BOD5).
4. The unnamed tributary, which flows to the Sandy Bottom Branch and then to the Pocomoke Sound, is located in the Chesapeake Bay, Atlantic Ocean, and Small Coastal Basin watersheds. The unnamed tributary is listed in DEQ's 305(b) report as impaired for fecal coliform. Tyson's Permit No. VA0004049 is listed in the fecal coliform TMDL as having a waste load allocation for *E. coli* based on the permit limit of 126 x 1.007 MGO. EPA approved the Total Maximum Daily Load (TMDL) on November 7, 2005 and the Board on April 28, 2009.
5. In submitting its DMRs, as required by the Permit, Tyson has listed that it exceeded discharge limits contained in Part I.A.1 of the Permit for ammonia for the March 2015, August 2015, and August 2016 reporting periods, TSS, *E. coli*, and fecal coliform for the March 2015 reporting period, and BOD5 for the September 2015 reporting period. Tyson also failed to provide a letter of explanation for non-compliance with its permit limits for the August, September, and March 2015 reporting periods in violation of Part II.I.3 of the Permit.
6. TRO issued a Warning Letter and Notice of Violation for the Permit limit exceedances and for failure to provide a letter of explanation for non-compliance described in C(5) as follows: WL No. W2015-05-T-1003, issued May 14, 2015; and NOV No. W2015-09-T-0003, issued October 27, 2015. The March 2015 TSS and ammonia effluent limit violations and the failure to provide a letter of explanation for non-compliance with its permit limits for the March 2015 reporting period were cited in WL No. W2015-05-T-1003.
7. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
10. The Department has not issued any permits or certificates to Tyson, regarding the discharge of the pollutants described above, other than VPDES Permit No. VA0004049.
11. The unnamed tributary is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
12. Based on the results of DMRs and accompanying documentation submitted by Tyson to DEQ for the months of March through September 2015, the Board concludes that Tyson has violated its Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging treated stormwater and wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(5) above.
13. Tyson submitted a “CAP” on December 16, 2016 to address the violations described in paragraph C(5) above. The CAP was revised on March 8, 2017, which was approved by DEQ on May 12, 2017.
14. On October 12, 2017, Tyson submitted a revised CAP proposing additional actions that further clarify their return to compliance. The October 2017 CAP is incorporated as Appendix A of this Order. In the October 2017 CAP, Tyson proposed to dewater and land apply solids from the solids lagoons, refurbish an old lagoon that has been out of service (i.e. remove vegetation, rebuild embankments, install liner and associated piping), reduce water consumption, and conduct a third-party evaluation of its wastewater treatment operations.
15. Tyson is in compliance with the October 2017 CAP as follows:
 - a. Tyson began dewatering and land-applying solids in April 2018 in accordance with the October 2017 CAP compliance schedule. During April 2018, Tyson removed and land-applied 3,000,000 gallons of liquid sludge from the waste activated sludge lagoon. Tyson also removed and land-applied 2,250,000 gallons of sludge from the anaerobic solids lagoon. Land application of solids is performed in accordance with the VPA Permit.
 - b. Tyson has performed an engineering design study for lagoon refurbishment. The design completion date in the October 2017 CAP compliance schedule (on or before January 12, 2018) was extended until the fall of 2018. The design study was completed in August 2018.
 - c. The Tyson water conservation initiative is in progress. According to Tyson, this Facility has recognized a 15.29% reduction in groundwater use and an 18.03% reduction in wastewater discharges in gallons in the first five months of 2018 compared to 2017. This year over year reduction helps to demonstrate this Tyson

facility is currently on track to meet its portion of the overall 12% water reduction goal for Tyson Foods, Inc. by 2020. The reduction in groundwater use does not imply, determine, or entitle Tyson to a specific limit or approval of a specific groundwater withdrawal amount in any Virginia Groundwater Withdrawal Permit.

- d. Tyson has completed its third-party evaluation of its wastewater treatment operations on December 18, 2017. The audit was evaluated against Tyson's corporate wastewater standards, as well as state and federal regulatory requirements. The audit concluded that there were no issues with Tyson's compliance with state and federal requirements but made four recommendations with respect to compliance with Tyson's corporate wastewater standards. Tyson has addressed the four recommendations identified in this report.
16. In addition to CAP requirements, Tyson has submitted an updated Solids Disposal Plan, O&M Manual, a wastewater process control document, and an updated wastewater flow diagram. Tyson completed its aboveground storage tank certifications, including pipe testing, removal of underground piping, and renewed its risk management program. Tyson also completed its stormwater drain and ditch cleanout and submitted a synthetic minor air permit application on November 30, 2017, which DEQ issued to Tyson on June 26, 2018. Tyson continues to operate under a Title V air permit as well.
 17. In order for Tyson to return to compliance, DEQ staff and representatives of Tyson have agreed to the October 2017 CAP and the Schedule of Compliance, which is incorporated as Appendices A and B of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Tyson, and Tyson agrees to pay a civil charge totaling \$30,160.00. Tyson has previously paid \$26,160 of the civil charge by making payments to DEQ on December 21, 2016 and May 25, 2017, in the amounts of \$16,150 and \$10,010, respectively. Tyson paid the remaining \$4,000 to DEQ on May 29, 2018.

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Tyson and Tyson agrees to perform the actions described in Appendices A and B of this Order.

Payments shall be made to DEQ within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104

Richmond, Virginia 23218

Tyson shall include its Federal Employer Identification Number (FEIN) _____ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Tyson shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Tyson for good cause shown by Tyson, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in NOV No. W2015-09-T-0003 dated October 27, 2015, and Warning Letter No. W2015-05-T-1003 dated May 14, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tyson admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tyson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tyson declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tyson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Tyson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tyson. Nevertheless, Tyson agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Tyson has completed all of the requirements of the Order;
 - b. Tyson petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tyson.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tyson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tyson and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Tyson certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Tyson to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tyson.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Tyson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20__.

Craig Nicol, Regional Director
Department of Environmental Quality

Tyson Farms, Inc. voluntarily agrees to the issuance of this Order.

Date: 1/16/2019 By: Kevin J. Igli, SVP Chief Environmental Officer
(Person) (Title)
Kevin J. Igli
Tyson Farms, Inc.

Commonwealth of ~~Virginia~~ Arkansas SJH
City/County of Washington

The foregoing document was signed and acknowledged before me this 16th day of
January, 2019, by Kevin J. Igli who is
SVP Chief Environmental Officer of Tyson Farms, Inc., on behalf of the corporation.

Stephanie Jean Hendricks
Notary Public

12705958
Registration No.

My commission expires: 4/4/2028

Notary seal:



APPENDIX A
October 12, 2017 CAP

APPENDIX B SCHEDULE OF COMPLIANCE

1. Land-Apply Solids from Solids Lagoons

- a. Tyson shall continue to remove and land-apply solids from the anaerobic and waste activated sludge holding lagoons as needed to ensure compliance in accordance with its O&M Manual and Permit requirements.
- b. If at any time during refurbishment of lagoons under B.2, solids exceed the design capacity of the wastewater treatment system (i.e. the treatment lagoons and wastewater treatment plant), Tyson shall operate a portable belt press to remove solids and land-apply in accordance with the VPA Permit.

2. Refurbish Inactive Lagoons Nos. 2 and 3

- a. Tyson shall complete construction of lagoon refurbishment as expeditiously as possible but in no event later than January 1, 2020.
- b. Tyson shall submit quarterly progress reports to DEQ by the 10th day of the month following the preceding quarter (e.g. January-March, due April 10th).
- c. Refurbishment shall include the removal of vegetation and biosolids, rebuilding of embankments, and installation of liner and associated piping.

3. Water Conservation

- a. Tyson shall maintain at a minimum the current Facility water consumption reduction per pound of product (compared to a 2015 baseline) of 12% through 2020.
- b. By January 1, 2019, Tyson shall update the existing groundwater Water Conservation and Management Plan ("Plan"), which was last revised on October 16, 2008, to ensure compliance with 9VAC25-610-100.B.2. At a minimum, the Plan shall include:
 1. Requirements for the use of water saving equipment and processes to ensure the most efficient use of groundwater and reductions in water demand where practicable;
 2. A water loss reduction program including a leak detection and repair program;
 3. A water use education program which contains requirements for the education of water users and training of employees controlling water consuming processes. The program will include a schedule for information distribution and the type of materials used;
 4. An evaluation of potential water reuse options and assurances that water will be reused in all instances where reuse is practicable and not prohibited by other

- regulatory programs; and
5. Requirements for mandatory water use reductions and compliance with restrictions during water shortage emergencies declared by the local governing body or water authority consistent with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This should include requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies.

4. Submittals

- a. Unless otherwise specified, Tyson shall submit all requirements of Appendices A and B of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462